

In the High Court of Punjab and Haryana at Chandigarh.

Civil Writ Petition No.6168 of 1995.

Date of decision:21.11.2006.

Tehal Singh

...Petitioner.

Versus

Union of India and others

..Respondents.

Coram: Hon'ble Mr. Justice S. N. Aggarwal.

...

Present: Mr.S.S.Chandi Advocate for the petitioner.

Mr.T.S.Chauhan, Additional Advocate General Punjab
for respondent Nos.2 and 3.

Mr.Gulshan Sharma Advocate for respondent No.4.

Mr.R.S.Athwal Advocate for respondent Nos.5 to 7.

Ms.Deepali Puri Advocate for respondent Nos.8 to 14.

Judgment.

S. N. Aggarwal, J.

Civil Writ Petition No.6168 of 1995 (Tehal Singh Versus Union of India and others), Civil Writ Petition No.6169 of 1995 (Inder Kaur and others Versus Union of India and others),Civil Writ Petition No.7296 of 1996 (Ashok Kumar Versus Union of India and others) and Civil Writ Petition No.695 of 1998 (Joginder Singh and another Versus Union of India and others) are being disposed of by this judgment as common questions of fact and law are involved. However, the facts are being taken from Civil Writ Petition No.6168 of 1995.

The version of the petitioner is that Ganda Singh was a displaced person and had come to India from West Pakistan after the partition of country. He had abandoned rural agricultural land in Pakistan. Instead thereof, the land was allotted to Ganda Singh in India. He was entitled to additional allotment of 2 standard acres 10 units of 'A' Grade land. Said Ganda Singh died and the petitioner inherited his rights. The petitioner applied to the Tehsildar (Sales) for allotment of sub urban area situated in villages Nangal Slemipur and Bulandpur, Tehsil and District Jalandhar vide application dated 8.8.1994 (Annexure P-1). However, the Tehsildar (Sales) (respondent No.3) informed the attorney of the petitioner (Annexure P-2) that allotment of sub urban land cannot be made in view of instructions issued by the Government of Punjab vide letter dated 12.4.1994. A copy of the instructions dated 12.4.1994 is attached as Annexure P-3.

It was further pleaded by the petitioner that evacuee properties consisting of urban, sub urban, rural agricultural land etc. have vested in the Custodian under the Administration of Evacuee Property Act, 1950 (in short AEP Act, 1950). The said land is utilised by the Central Government under Section 14 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 (in short Displaced Persons Act, 1954) against payment of compensation and for rehabilitation grants to the displaced persons. Reference was made to the Land Re-settlement Manual, 1952 compiled by Shri Tirlok Singh, ICS and it was pleaded that sub urban land can be allotted to 'A' Grade

allottees. It was also pleaded that the State of Punjab has no right to issue any such instructions denying the allotment of sub urban land to the 'A' grade allottees. Therefore, the vires of the instructions dated 12.4.1994 were also challenged. It was also prayed that letter dated 8.8.1994 sent by the Tehsildar (Sales) to the attorney of the petitioner declining the grant of sub urban area to the petitioner be set aside.

On the other hand, respondent Nos.1 to 3 filed joint written statement. Their version was that the petitioner has not availed the alternative remedy available under Section 22 of the Displaced Persons Act, 1954 and the rules framed thereunder. He had the remedy of appeal before the Settlement Commissioner. Since the petitioner has failed to avail alternative remedy, therefore, the writ petition deserves dismissal.

On merits, it was pleaded that the petitioner was entitled for the allotment of 'A' Grade land but he had not applied for it. Instead he has applied for the allotment of sub urban area which was not admissible to him as per policy of the Government. The policy of the State Government communicated vide letter dated 12.4.1994 was reiterated under which the application of the petitioner for allotment of sub urban area has been rejected. It was also pleaded that the State Government was fully competent to make rules for the disposal of land as the entire land has been transferred by the Central Government to the State Government as the latter has paid the price to the Central Government under the Punjab Package Deal Properties (Disposal) Act,

1976 (in short Package Deal Act, 1976).

The version of respondent No.4 was little different. His case was that allotment of land to him in compliance with the judgment of the Hon'ble Supreme Court dated 12.12.1983 passed in Civil Appeal No.2057 of 1970 (**Chand Kumar Kapur Versus Chief Settlement Commissioner, Punjab and others**) has been held up because of the pendency of these writ petitions in this Court. Hence, it was prayed that the authorities be directed to consider the case of respondent No.4 as per judgment of the Hon'ble Supreme Court dated 12.12.1983. Similar was the version of respondents No.5 to 11.

The submissions made by the learned counsel for the parties have been considered.

The petitioner was allottee of 'A' Grade land and, therefore, he was not entitled to sub urban area. As a matter of rule, he was entitled to rural agricultural land. It has also been specifically pleaded in para No.12 of the writ petition by the petitioner that as per Land Resettlement Manual, the sub urban land is neither purely rural nor purely urban. Such land is situated within one mile of a town with a particular population according to census of 1941. The land for which the petitioner applied was sub urban land. Although in the application dated 8.8.1994 (Annexure P-1), the petitioner has applied for the allotment of land in villages Nangal Salempur and Bulandpur but it was specifically verified by the Kanungo in his report dated 11.8.1994 that these villages fall in sub urban area and for that purpose, the allotment

of this land was declined to the petitioner.

It is not pleaded by the petitioner that the said land was not sub urban land. It is also not denied by the learned counsel for the petitioner that the allottee of 'A' Grade land was not entitled to sub urban area whereas he was entitled to rural agricultural land as per the rules. Therefore, the petitioner had no legal claim for sub urban area. Even when the attorney of the petitioner was informed that sub urban area cannot be allotted to him, he did not apply for any other rural agricultural land against 'A' Grade allotment. He insisted upon the allotment of sub urban area to which he was not entitled.

It was submitted by the learned counsel for the petitioner that the evacuee property was the property of the Central Government to be applied in accordance with the provisions of Displaced Persons Act, 1954. Therefore, the Punjab Government had no right to issue any instruction like the one contained in letter dated 12.8.1994 (Annexure P-3).

This contention, however, has no force. After coming into force of the Package Deal Act, 1976, the State Government was duly authorised to dispose of the property as the property was purchased by the State of Punjab from the Central Government.

Package deal property has been defined in Section 2(1-A) of the Package Deal Act as under:-

“(1-A) 'package deal property' means the surplus evacuee property taken over by the State Government and referred

to in the Government of India letter-

(i) No.3(35) Pol.II/60-Land & Rent,dated 3rd June 1961, read with letter No.3(54)/Pl.II/60-L&R, dated 5th March,1962.

(ii) No.F.18(40)J/61/Prop/Comp & Prop.,dated 23rd March,1963 and,

(iii) No.F.18.(40)/61-Prop.-Comp & Prop.,dated 29 March, 1963, reproduced in the Schedule to this Act; but excluding such property as may be required for transfer or allotment, by way of compensation to a displaced person, as defined in the Displaced Persons (Compensation and Rehabilitation) Act, 1954, and rural agricultural land required for similar allotment to a displaced person of non-Punjabi extraction in pursuance of the Directions of the Central Government given under Section 32 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954, read with sub-rule (2) of Rule 66 of the Displaced Persons (Compensation and Rehabilitation) Rules, 1955.”

The letters of the Central Government, referred to, in the definition of Package Dealt Property came up for consideration before Hon'ble Division Bench of this Court in **Bishan Singh and others Versus Chief Settlement Commissioner and others**, 1973 P.L.J.183 in which it was held as under:-

“11. Till 1961 transfer of evacuee agricultural land

was, consequently, made under the provisions of section 20 of the Rehabilitation Act and the Rules made thereunder. By that time, majority of the claimants had been duly settled. As a result of negotiations between the Central Government and the Punjab Government, the Central Government decided to transfer and the Punjab Government agreed to purchase the entire surplus evacuee land and houses in the rural area on certain terms and conditions. These are incorporated in D.O. letter No.Reh.(61)/833, dated 24th April, 1961, and the final letter of the Central Government on the point is dated 3rd June,1961. According to these conditions all rural houses/sites, entire remaining Ghair Mumkin land and all the unallotted cultivable agricultural lands were transferred to the State Government on certain agreed price. It is not necessary to go into these terms and conditions in detail. All that is necessary to be mentioned here, and there is no dispute between the parties regarding this matter, is that as a result of this agreement between the Central Government and the State Government, the unallotted surplus evacuee rural land, houses, etc. stood transferred to the State Government. This so called 'Package Deal' has been held by this Court, to be valid (see Ram Chander v. The State of Punjab and others,

1968 P.L.R 874). It was held by a Bench of this Court “that the 'Package Deal' has the effect of transferring the property from the Central Government to the Punjab State and the logical result which flows from it is that the Settlement Authorities as delegates of the Central Government could not pass any orders under the Act.” Again it was observed that “the 'Package Deal' put an end to the ownership of the Central Government of the properties comprised in the compensation pool, and the State Government, thereafter had full authority to dispose them.” It was further held that “under rule 34, the Central Government is competent to make a disposal of transference of the properties under the compensation pool in whatever manner it feels disposed.” The transfer being under the statute itself, the provisions of Article 299(1) of the Constitution would not be applicable.

12. As was noticed by the Bench in Ram Chander's case (supra), Punjab Government had made certain rules for the disposal of the property acquired by it under this 'Package Deal' and it was not disputed that the property so acquired by the State could be disposed of by the Authorities notified by the State Government in those rules and the Authorities under the Rehabilitation Act, as delegates of the Central Government, have no power to

deal with this property.”

It is, therefore, amply clear that the State Government was the owner of the property which was once evacuee property and, therefore, there is no legal infirmity in the policy laid down by the State Government as contained in the letter dated 12.4.1994 (Annexure P-3).

No doubt, the Punjab Government had no right to decline the allotment of said land on arbitrary basis. However, 'A' Grade allottees were entitled to rural agricultural land but they were insisting for sub urban area which was more valuable and for that reason, the Government of Punjab framed the policy of rejecting the case of allotment of sub urban area to the allottees of “A' Grade land. There is a reasonable basis in the policy decision dated 12.4.1994 (Annexure P-3). Therefore, it does not suffer from any mala fide or arbitrariness. Therefore, the instructions dated 12.4.1994 (Annexure P-3) are not ultra vires of the Act or the Rules framed thereunder.

Although the petitioner seeks a direction against respondent Nos.1 to 3 for allotting sub urban area to him but no document has been placed on the file to show if any such sub urban area was available for allotment. Therefore, the writ petition is liable to be dismissed on that ground also.

It was also submitted by the learned State Counsel that Displaced Persons Act, 1954 has been repealed by the Displaced Persons Claims and other Laws Repeal Act, 2005 with effect from

5.9.2005. Now, there is no authority under the said Act and, therefore, the alleged claim of the petitioner has become barred by law. However, the consideration of this aspect of the matter is not necessary for deciding this writ petition.

In view of the discussion held above, it is held that there is no merit in the present writ petition and the same is dismissed.

November 21, 2006.
Jaggi

(S. N. Aggarwal)
Judge

Civil Writ Petition No.6168 of 1995.